

SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE:

CYNTHIA A. HOLLOWAY

NO.: 00-143

---

Florida Supreme Court

Case No.: SC00-2226

**SPECIAL COUNSEL'S MOTION TO STRIKE IMPROPER "NOTICE OF  
SUPPLEMENTAL AUTHORITY"**

Special Counsel to the Florida Judicial Qualifications Commission ("FJQC"), hereby moves to strike the improper notice of supplemental authority served by mail on May 24<sup>th</sup>, 2002 and, as grounds therefore states as follows:

1. Judge Holloway has just served what purports to be a "Notice of Supplemental Authority" attaching a recent stipulation between the FJQC and a different Judge, Judge Gregory Holder.<sup>1</sup> As the ostensible legal basis for her "Notice," Judge Holloway cites Fla. R. App. Proc. 9.225.

2. The contents of Judge Holloway's filing are not authorized by the rule, which applies strictly to supplemental **legal** authority. It provides:

Notices of supplemental authority may be filed with the court before a decision is rendered to call attention to **decisions, rules, statutes, or other authorities that are significant to the issues raised after the last brief served in the cause....** (emphasis added).

---

<sup>1</sup> The attached copy was unexecuted, but a formal stipulation has been executed between the Commission and Judge Holder.

3. A stipulation between the Commission and another judge does not fall into any of these categories - it is not new **legal** authority which can be cited as support for any proposition.

4. The proper vehicle to address and inappropriate notice of supplemental authority is a motion to strike. See generally McDowell v. Rodriguez, 2001 WL 929761, 26 Fla. L. Wkly D2328 (Fla. 5<sup>th</sup> DCA 2001) (striking for blatant attempt to circumvent the appellate rules); Ogden Allied Services v. Panesso, 619 So. 2d 1023 (Fla. 1<sup>st</sup> DCA 1993). The problem with the notice in these cited cases was counsel's obvious attempt to re-brief the issues, either immediately before or after oral argument. The problem with the notice in this case is its contents, which are not the proper subject of a notice of supplemental authority, and really seek to insert inappropriate matters into the record on appeal. See e.g. Rosenberg v. Rosenberg, 511 So. 2d 593, 594 n.3 (Fla. 3d DCA 1987) (granting appellant's motion to strike request for judicial notice of newspaper articles, because the "procedure was completely inappropriate," and directing the materials returned because "It is entirely inappropriate and subjects the movant to possible sanctions to inject matters in the appellate proceeding that were not before the trial court"); rev. den., 520 So. 2d 586 (Fla. 1988); Thornber v. City of Ft. Walton Beach, 534 So. 2d 754 (Fla. 1<sup>st</sup> DCA 1988) (accord). The recent stipulation between the FJQC and Judge Holder is neither

legal authority nor record material properly before this Court.

Judge Holloway's notice of supplemental authority is inappropriate, and should respectfully be stricken.

Respectfully submitted,

By: \_\_\_\_\_  
Lauri Waldman Ross, Esq.  
Florida Bar No. 311200  
Lauri Waldman Ross, P.A.  
Two Datan Center, Suite 1612  
9130 South Dadeland Blvd.  
Miami, Florida 33156-7818  
(305) 670-8010  
Special Counsel for the Florida  
Judicial Qualifications  
Commission

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished as indicated this \_\_\_\_ day of May, 2002 to:

Thomas D. Hall, Clerk  
Florida Supreme Court  
500 Duval Street  
Tallahassee, Florida 32399-1927

Honorable James R. Wolf  
Chair, Investigative Panel  
Judicial Qualifications Commission  
First District Court of Appeals  
301 South Martin Luther King Jr., Blvd.  
Tallahassee, Florida 32399-1850

Honorable James R. Jorgenson  
Chair, Hearing Panel  
Judicial Qualifications Commission  
1110 Thomasville Road  
Tallahassee, Florida 32303

Brooke S. Kennerly  
Executive Director  
Judicial Qualifications Commission  
1110 Thomasville Road  
Tallahassee, Florida 32303

Beatrice A. Butchko, Esq.  
Special Counsel, (at trial)  
Ferrell, Schultz, Carter, Zumpano & Fertel, P.A.  
201 South Biscayne Boulevard  
34<sup>th</sup> Floor  
Miami, Florida 33131

Timothy W. Ross, Esq.  
Special Counsel, (at trial)  
Kaye, Rose & Partners, LLP  
One Biscayne Tower, Suite 2300  
Two South Biscayne Boulevard  
Miami, Florida 33131

John Beranek, Esq.  
General Counsel  
Ausley & McMullen  
Washington Square Building  
227 Calhoun Street  
P.O. Box 391  
Tallahassee, Florida 32302

Scott K. Tozian, Esq.  
Smith & Tozian, P.A.  
109 North Brush Street, Suite 150  
Tampa, Florida 33602  
(813) 273-0063

Michael S. Rywant, Esq.  
Rywant & Guyton, P.A.  
109 North Brush Street, Suite 500  
P.O. Box 3283  
Tampa, Florida 33601  
(813) 229-7007

By: \_\_\_\_\_  
Lauri Waldman Ross, Esq.